

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
EASTERN WASHINGTON REGION
STATE OF WASHINGTON

WES HAZEN, et al.,

Petitioners,

v.

YAKIMA COUNTY,

Respondent,

And,

FRIENDS OF THE WENAS; COLUMBIA
READY-MIX; YAKIMA COUNTY FARM
BUREAU, INC., YAKIMA COUNTY
CATTLEMEN'S ASSOCIATION, CENTRAL
PRE-MIX CONCRETE COMPANY,

Intervenors.

Case No. 08-1-0008c

**COORDINATED
ORDER FINDING COMPLIANCE (Legal
Issues 2 & 6) AND ACKNOWLEDGING
CONTINUED STAY (Issue 15)**

WES HAZEN, UPPER WENAS
PRESERVATION ASSOCIATION AND
FUTUREWISE,

Petitioners,

v.

YAKIMA COUNTY,

Respondents,

And,

YAKIMA COUNTY FARM BUREAU,

Intervenor.

Case No. 09-1-0014

**COORDINATED ORDER FINDING
COMPLIANCE (Legal Issue 4)**

I. SYNOPSIS

These coordinated cases involve the designation and protection of Critical Aquifer Recharge Areas (CARAs) and Critical Area Ordinance Exemptions. In CARAs Legal Issue 2, Case No. 08-1-0008c; the Board finds **compliance** in the County's provisions to include and substantively consider Best Available Science in designating and mapping CARAs used for potable water. With the County's repeal of the Critical Area Ordinance Exemptions the Board finds the County in **compliance** in Issue 6, Case 08-1-0008c and Issue 4, Case 09-1-0014. Because judicial review is pending in the Court of Appeals, the Board issues a continuing **Stay of Compliance Proceedings** in the matter of Aquatic Critical Areas (Case 08-1-0008c, Issue 15).

II. BACKGROUND AND PROCEDURAL HISTORY

In 2008, several Petitions for Review (PFR) were filed with the Eastern Washington Growth Management Hearings Board (Board) in relationship to amendments enacted by Yakima County to its Critical Areas Ordinance (CAO) via Ordinance 13-2007 and Ordinance 15-2007. These petitions were consolidated and the subject of various settlement negotiations. However, because not all issues were resolved during these negotiations, on April 5, 2010, the Board issued its Final Decision and Order (FDO) in the matter of *Wes Hazen, et al v. Yakima County*, Case No. 08-1-0008c.¹ With this FDO, the Board determined Yakima County had failed to comply with the Growth Management Act, RCW 36.70A (GMA).

The Board remanded the challenged ordinances to the County to take legislative action to achieve compliance by October 4, 2010, which was later extended to February 1, 2011.² Subsequently, Yakima County and Intervenor Yakima Farm Bureau filed appeals of the Board's April 2010 FDO in Yakima County Superior Court, consolidated under Cause No. 10-2-01392-9. Of the areas the Board determined non-compliant, the court appeal related only to Issue 6, Issue 14, and Issue 15.

¹ The only petitioners remaining in Case 08-1-0008c were the Yakama Nation and Wes Hazen, Upper Wenas Preservation Association, and Futurewise (collectively Futurewise).

² August 17, 2010 Order Granting Motion to Extend.

1 While review was pending before the Board in regards to Case 08-1-0008c, in 2009 a new
2 PFR was filed challenging several amendments the County had adopted to its CAO via
3 Ordinance 2-2009 as a result of the settlement negotiations in Case 08-1-0008c. On June
4 14, 2010, the Board issued its FDO in the matter of *Wes Hazen, et al v. Yakima County*,
5 Case No. 09-1-0014.

6 On January 4, 2011, a Stipulated Motion for Extension of Compliance Dates was filed with
7 the Board for the two cases. Given the interwoven nature of these cases, the Board
8 coordinated the compliance proceedings so as to allow for efficiency in their disposition, and
9 granted an extension for compliance.³

10 On February 11, 2011, the Board received Yakima County's Status of Compliance with FDO
11 and its Index of Compliance setting forth actions it has taken in regards to both matters.

12 On February 25, 2011, the Board received Objections to a Finding of Compliance from Wes
13 Hazen, et al., (Futurewise.)

14
15 On March 7, 2011, the Board received Yakima County's Response to Futurewise's
16 Objections.

17 On March 15, 2011, the Board held a telephonic compliance hearing for these coordinated
18 matters. The matter was continued, and on April 19, 2011 the Board held a telephonic
19 hearing in relationship to the continued matters.

20 At the April 19, 2011 continued hearing, it was determined by the Board that supplemental
21 evidence was needed as to Yakima County's action taken in relationship to Issue 10 –
22 LAMIRDs, specifically the designation of the Buena Area as a Type 1 LAMIRD and its 1990
23 "built environment." Therefore, the Board bifurcated Issue 10, and on May 20, 2011, the
24 Board issued a Partial Order Finding Compliance in this matter.

25 ³ See Order Granting Extension of Compliance Period, January 7, 2011.

1 On April 27, 2011, the Board issued a Partial Coordinated Compliance Order and Issuance
2 of Stay in Case No. 08-1-0008c and Coordinated Compliance Order in Case No. 09-1-0014.

3 On November 7, 2011, the Board received Yakima County's Compliance Report/SATC and
4 County's Compliance Index.

5
6 On November 21, 2011, the Board received Futurewise's Concurrence with a Finding of
7 Compliance for Case No. 08-1-0008c Issue 6 and Case No. 09-1-0014 Issue 4 and An
8 Objection to a Finding of Compliance for Case No. 08-1-0008c Issue 2.

9 On December 1, 2011, the Board received Yakima County's Response to Futurewise's
10 Objection to Compliance.

11 On December 13, 2011, the Board held a telephonic compliance hearing for the coordinated
12 matters. Board members Joyce Mulliken, Raymond Paoella, and Nina Carter attended, with
13 Board member Mulliken presiding. Wes Hazen, Friends of the Wenas, and Futurewise,
14 were represented by Tim Trohimovich. Yakima County was represented by Paul McIlrath,
15 with Planning Director Steve Erickson, and Senior Planner Lennard Jordan in attendance.

16 III. BOARD DISCUSSION AND ANALYSIS

17 Issue 2 and 6 (08-1-0008c) and Issue 4 (09-1-0014): Critical Areas and CARA

18 Futurewise stated in their brief they agreed the language in Yakima County Ordinance No.
19 6-2011 satisfied their concerns, but were not clear if the County had *adopted* the ordinance
20 with all of the agreed language.⁴ Yakima County provided a copy of the negotiated agreed-
21 upon language for the Board and Petitioner.⁵ At the compliance hearing Futurewise
22 amended their objection to recommend a finding of compliance in this matter. Futurewise
23 agrees the County's Ordinance 06-2011 adequately addresses both the critical area
24 exemption issue, and the CARA mapping issue.

25 ⁴ Futurewise Concurrence and Objection Brief, November 19, 2011.

26 ⁵ Yakima County, Attachment A and B.

1 With the adoption of Yakima County Ordinance No. 6-2011 repealing the exemptions in
2 Yakima County Code (YCC) § 16C.03.06, § 16C.03.07, § 16C.03.08, and § 16C.03.09 and
3 related amendments, the Board finds Yakima County Critical Areas regulations **compliant**
4 with the Growth Management Act as to EWGMHB Case No. 08-1-0008c, Legal Issues 2
5 and 6, and EWGMHB Case No. 09-1-0014 Legal Issue 4.

6 **Issue 15: Aquatic Critical Areas – Type 5 Streams, Buffers, and Wetland Buffer**
7 **Adjustments**

8 Given the pendency of judicial review in the Court of Appeals, the Board issues a continuing
9 **Stay of Compliance Proceedings** in regards to its holdings for Issue 15 as to the Type 5
10 Streams, Stream Buffers, and Wetland Buffer Width Adjustments.

11 **IV. ORDER**

12 Based upon the foregoing, the Board finds and concludes:

13 1. Yakima County has enacted legislation to achieve compliance with the GMA concerning
14 the following issues, and therefore, the Board issues a **finding of compliance** in regards to
15 the following issues:

16 Case 08-1-0008c

17 Issue 2: Critical Aquifer Recharge Areas (CARAs) – Designation Subissue

18 Issue 6: CAO Exemptions

19 2. Yakima County has enacted legislation to achieve compliance with the GMA by
20 repealing Critical Areas Exemptions, and therefore, the Board issues a **finding of**
21 **compliance** in *Wes Hazen, Upper Wenas Preservation Association and Futurewise v.*
22 *Yakima County*, EWGMHB Case No. 09-1-0014. This case is hereby closed.

23 3. Judicial review is pending in the Court of Appeals as to the following issue, and
24 therefore, the Board issues a continuing **stay of the compliance proceedings**:

25 Case 08-1-0008c

Issue 15 – Aquatic Critical Areas – Type 5 Streams, Stream Buffer Widths, Wetland Buffer Width Adjustments.

Entered this 13th day, January 2012.

Joyce Mulliken, Board Member

Raymond L. Paolella, Board Member

Nina Carter, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a petition for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy to all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).